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Federal Communications Commission

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Implementation of Section 309(j)
of the Communications Act

Competitive Bidding

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PP Docket No. 93-253

To: The Commission

**JOINT REPLY COMMENTS OF
PACTEL PAGING AND MIDCONTINENT MEDIA**

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MIDCONTINENT MEDIA

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SUMMARY

PacTel Paging and Midcontinent Media, Inc. (collectively, the "Joint Commenters") are submitting their reply comments regarding the manner in which competitive bidding should be conducted for narrowband PCS licenses.

The reply pleading emphasizes the unique aspects of the narrowband allocation that justify special auction procedures at variance from those specified in the tentative proposal for wideband licenses. Also, because of the significant differences between the wideband and narrowband allocations, the Joint Commenters oppose the use of the narrowband auctions as a testbed for wideband procedures.

The comments of the major proponents of narrowband services exhibit a remarkable consistency in their recommendations for narrowband auction procedures. Generally, these comments support the simultaneous auctioning of fungible narrowband channels using an open ascending bidding mechanism, starting with the largest territories and bandwidths. The Joint Commenters oppose the use of sealed bids which would inject elements of luck and surprise into the process.

The comments of others in the proceeding have caused the Joint Commenters to modify their position on upfront payments. The formula initially proposed by the Commission would result in too small an upfront payment to deter speculators from participating in many cases. As a result, the Joint Commenters propose an upward adjustment in the upfront payment schedule.

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PacTel Paging ("PTP")^{1/} and Midcontinent Media, Inc. ("Midcontinent"), collectively referred to herein as the "Joint Commenters", hereby submit their reply to the comments filed November 10, 1993, in response to the Notice of Proposed Rulemaking (the "Notice")^{2/} in the above-captioned proceeding. These reply comments, like the Joint Commenters' initial comments in this proceeding, address competitive bidding issues related to the narrowband Personal Communications Services ("narrowband

^{1/} PTP is a wholly owned subsidiary of PacTel Corporation ("PacTel"), a diversified telecommunications company specializing in wireless services. PacTel is filing comments in response to the Notice for all of its other wireless services, including cellular telephone service, automatic vehicle location services, and wideband PCS.

^{2/} FCC 93-455, released October 12, 1993.

PCS")^{3/} and non-cellular land mobile services. In reply, the following is respectfully shown:

I. Preliminary Statement

1. A deluge of comments has been filed in this proceeding by a complete cross-section of interested parties with diverse and disparate points of view.^{4/} Not surprisingly, the comments, like the Notice itself, devote a great deal of attention to wideband PCS, and the special auction issues attendant thereto.^{5/} This focus on wideband issues exacerbates the concern expressed by PTP and Midcontinent in their original comments that the particular distinguishing features of

^{3/} See First Report and Order (ET Docket No. 92-100), FCC 93-329, released July 23, 1993 (the "Narrowband PCS Order").

^{4/} Nearly two hundred sets of comments were filed by a whole host of individuals, businesses and organizations. The represented interests include individual cellular unserved area applicants, minority-owned businesses, women-owned businesses, rural telcos, cellular companies, cable companies, LECs, IXCs, public service commissions, paging companies, SMR companies, satellite launch companies, manufacturers, industry associations, user groups, governmental entities, broadcasters, auction experts, engineers, law firms and others.

^{5/} The proposed set-aside of two blocks of wideband PCS spectrum for "Designated Entities" has generated considerable comment, particularly in light of Commissioner Barrett's expressed concerns over the economic viability of these blocks as configured by the Commission. The wideband allocation also presents unique auction issues because of the complexities involved in creating a competitive bidding mechanism that allows both geographic areas and different frequency bands to be aggregated.

narrowband PCS may not receive adequate attention.^{6/} An auction procedure perfectly tailored to effect the optimal assignment of wideband PCS licenses will not necessarily work well for narrowband PCS licensing.^{7/} The Joint Commenters' reply comments will focus primarily on the unique aspects of the narrowband allocation that give rise to the need for auction procedures at variance from the tentative proposal.^{8/}

II. The Narrowband Auctions Should Not Be Used as a Testbed

2. AT&T, in its comments, proposes using the 900 MHz narrowband auctions as a "trial" for bidding procedures,

^{6/} As the Joint Commenters pointed out in their initial Comments, the Narrowband PCS Order deferred the adoption of specific narrowband licensing rules pending Congressional action regarding auction authority. Yet, the auction Notice did not contain a detailed licensing plan outlining the mechanics of the narrowband application process. The Joint Commenters are concerned that the myriad of issues involved in the auction proceeding will cause the nuts and bolts of narrowband PCS licensing to be overlooked.

^{7/} As is discussed within, the wideband and narrowband PCS allocations are quite different which should lead to different auction rules. For instance, more narrowband licenses are available by a factor of more than 2. Holding oral sequential auctions for narrowband PCS at a rate of one a day would over 20 years! Simultaneous auctioning of fungible narrowband channels is in order.

^{8/} The Narrowband PCS Order specifically noted that there are significant differences between the wideband and narrowband allocations and, as a result, the resolution of the licensing issues for narrowband were not to be taken as a prejudgment of the manner in which the same issues would be resolved for wideband. Id. at note 1. The same reasoning should apply in the course of resolving the auction proceeding. Tentative decisions made with the wideband auctions in mind should not preclude the adoption of a revised procedure for narrowband.

suggesting that this would help the Commission gain necessary experience.^{9/} McCaw Cellular, which is in the process of being acquired by AT&T^{10/}, also advocates that the Commission practice with narrowband PCS applications and proceed with wideband auctions only after "valuable practical experience" has been garnered.^{11/} The Joint Commenters strenuously object to this approach for a variety of reasons.

3. First, and foremost, this recommendation assumes that the same considerations will govern the proper design of both narrowband and wideband auctions. There are, however, obvious differences between these allocations that completely undermine the use of narrowband as a testbed. For example, the narrowband PCS band is unoccupied meaning that there are no differences between one narrowband channel and another based upon the number of incumbent users that need to be moved.^{12/} Also, the narrowband channels all fall within a narrow frequency range that is generally considered to have common technical

^{9/} AT&T Comments, pp. 10-11.

^{10/} It is worth noting that only two related commenters proposed the use of narrowband licensing as a "dry run" for wideband auctions. As is discussed within, the idea suffers from a variety of shortcomings, which may explain the lack of general support for the concept.

^{11/} McCaw Cellular Comments, p. 2.

^{12/} In contrast, wideband PCS spectrum presently is licensed to microwave users, and there can be vast differences from one block to the next in the number of incumbent licensees that must be moved.

characteristics across the band.^{13/} The result is a general consensus that narrowband channels are "fungible"^{14/}, which is not necessarily the case with wideband channels.^{15/} Moreover, there are no proposed set asides in narrowband PCS for small, woman-owned, minority-owned, or rural telephone companies.^{16/} And, there are substantially more narrowband channels to be auctioned than wideband channels -- by a factor of more than 2.^{17/} In sum, the dynamics of the narrowband and wideband auctions are likely to be vastly different.

4. Second, using the narrowband licensing process as a trial could encourage the participation in the bidding of entities that have no real interest in the business of providing narrowband PCS services. Just as AT&T and McCaw are suggesting a

^{13/} In contrast, there are some indications that the wideband blocks above 2 GHz are less technically desirable than those below 2 GHz.

^{14/} Obviously, to be considered fungible, the channels would have to be paired in a similar fashion and available for the same geographic area. So, for example, the 7 asymmetrically paired narrowband channels that are to be assigned on an MTA basis would be considered fungible.

^{15/} In particular markets, there may be a vast difference between the two 30 MHz MTA wideband blocks based upon the number of microwave links that must be moved to make the spectrum fully useable.

^{16/} The Joint Commenters do not support the use of set asides for narrowband spectrum for the reasons set forth in their initial comments (pp. 30-32). Other commenters have expressed a variety of additional concerns, even in the wideband context, with the proposed set-asides.

^{17/} As was noted in the initial comments of the Joint Commenters, special auction arrangements are appropriate when the Commission is dealing with a large number of fungible channels.

practice round of bidding for the Commission, major wideband players may elect to participate in narrowband auctions as practice for forthcoming wideband bidding.^{18/} The Joint Commenters do not favor an approach that encourages the participation of those who have only a casual interest in narrowband messaging services.^{19/}

5. Third, the implication of using the narrowband allocation for practice is that this is an inherently expendable band in which mistakes can afford to be made. Any such suggestion is untrue. The 900 MHz allocation is ideally suited for advanced messaging services^{20/} and represents nearly the last allocation of precious reserve spectrum to an industry that is growing by leaps and bounds.^{21/} Just as wideband proponents are anxious for the wideband auction process to be well-suited to the needs of the marketplace, those who have demonstrated a serious and longstanding interest in the narrowband services deserve a well-crafted auction tailored to the particular circumstances of

^{18/} Wideband PCS applicants also are eligible to file for narrowband licenses.

^{19/} Few commenters on the wideband auction issues bothered to mention narrowband, which indicates a general lack of interest in this band on behalf of many major proponents of wideband PCS.

^{20/} The 930 to 931 MHz band has long been earmarked for advanced paging services because of its close proximity to existing paging channels. This will facilitate equipment for this band.

^{21/} See Paging Leadership Association, Inc., Paging Industry Benchmark Ratio Study (Phase Nine Report, March 1993).

the narrowband allocation.^{22/} Experimentation for the purpose of optimizing the wideband process is not in order.

III. The Comments of the Major Proponents of Narrowband PCS Reflect a Consensus on Several Important Points

6. Telocator, Arch Communications Group ("Arch"), Pagemart, and Paging Network Inc. ("PageNet"), like the Joint Commenters,^{23/} devote substantial attention in their respective comments to the narrowband PCS allocation.^{24/} Notably, each of these parties has been an active participant in the narrowband docket (ET Docket No. 92-100) and the Advanced Messaging Service rulemaking proceeding that preceded it (RM-7617). To the extent that this group of commenters agree, the Commission can be certain that the positions are based upon a wealth of relevant experience.

7. A consensus can be found on several major points:

- Narrowband is different. As noted by the Narrowband Commenters, narrowband auctions involve the licensing

^{22/} The current robust paging business -- with an estimated 17 million subscribers in service -- is built on only 3 MHz of spectrum. This makes paging one of the most efficient users of spectrum. In comparison, one wideband PCS licensee will have over 10 times the spectrum allocated for all paging licensees.

^{23/} Collectively referred to herein as the "Narrowband Commenters".

^{24/} A variety of other commenting parties make occasional references to the narrowband allocation, but do not dwell upon the particular procedures that should apply. See, e.g., Comments of Quentin L. Breen (p.6); Telephone and Data Systems (pp. 5-6); United States Telephone Association (p. 2).

of a large number of substitutable frequencies. Special procedures are appropriate to handle this situation.^{25/}

- Simultaneous bidding for fungible licenses is appropriate. The Narrowband Commenters are unanimous in agreeing that the bidding mechanism must allow a market price to be established across the entire lot of homogeneous channels.^{26/} Market pricing of channels will prevent situations in which some overpay and others underpay for equivalent spectrum, which could disrupt the establishment of a level playing field in a highly competitive industry.^{27/}

- Auctions should proceed from the largest to the smallest markets and from the largest to the smallest bandwidths. The Narrowband Commenters generally agree that auctions in this band should commence with the nationwide licenses of greatest bandwidth, and proceed with successive auctions of smaller bandwidths until all nationwide licenses are

^{25/} Arch Comments, pp. 11-12; Telocator Comments, pp. 19-21; Joint Comments, pp. 15-16.

^{26/} See Comments of Arch, pp. 11-12; Telocator, p. 20; PageMart, pp. 11-13, PageNet, n. 30; Joint Commenters, pp. 8-9.

^{27/} This is the so called "winners curse." In order to ensure a robustly competitive market, the licensees must all pay roughly the same amount for the spectrum. Today, all paging operators pay the same amount for the spectrum, so they are free to compete on customer service, geographic coverage, and other cost savings. If players end up paying widely disparate amounts for equivalent spectrum, some players will be handicapped and be less able to compete on price, a major focus of paging competition.

issued.^{28/} This procedure would then be followed for each of the MTAs (commencing with the largest in population) and finally the BTAs. This sequence is expected to facilitate the aggregation of large regional territories on common frequencies.^{29/}

- An open ascending bidding mechanism should be utilized. Arch, Telocator, PageNet and the Joint Commenters all favor the an open ascending bidding procedure for narrowband licenses.^{30/} These commenters reason that this methodology is likely to award the license to the party who values it the most, and serves to eliminate luck and surprise as major elements in the process.^{31/}

- Prompt payment is required to deter speculation. With some variation in the specifics of each proposal, the Narrowband Commenters generally support the use of

^{28/} See Comments of Arch, pp. 12-13; Telocator, p. 20; Pagemart, pp. 20-23; PageNet, pp 17-18; Joint Commenters, pp. 16-17.

^{29/} PTP has consistently advocated dividing the country into a handful of large narrowband regions comparable to those served by existing wide area paging systems. Failing to do so, the Commission must adopt an auction procedure that enables applicants to aggregate spectrum across large geographic areas in response to market demand.

^{30/} See Comments of Arch, pp. 11-12; Telocator, p. 3; PageNet, pp. 7-16; Joint Commenters, pp. 15-16.

^{31/} The Joint Commenters have recommended that the bidding be done either electronically or via oral auctions. Participants would through their application filings and upfront payments qualify to bid on a certain amount of spectrum in each particular geographic area. For instance, if an applicant had qualified to bid for a full compliment of three 3 paired 50 kHz channels, the procedure would allow them to maintain three bids at any one time.

a combination of upfront payments, bid deposits and lump sum payments in order to limit participation in the competitive bidding to serious, financially- able applicants.^{32/}

• Paperwork should be minimized. The Narrowband Commenters express recurring concerns that the number of available narrowband licenses could result in a torrent of paperwork from those interested in bidding on a variety of licenses.^{33/} To avoid this result, streamlined application processes are recommended. Arch and the Joint Commenters propose a simple application form that enables applicants in a single consolidated filing to specify all bandwidths and geographic areas for which the applicants seeks to bid.^{34/} PageNet urges the Commission not to require site specific engineering until build out by the winner.^{35/} Telocator recommends the use of a simple pre-auction "postcard" form that will be administratively simple to process.^{36/}

8. The Joint Commenters urge the Commission adopt the foregoing recommendations which represent the consensus of informed narrowband proponents.

^{32/} Arch Comments, p. 14; Telocator Comments, pp. 13-14, 20; PageNet, pp. 22-25, 35-36; Joint Commenters, pp. 18-21.

^{33/} If current application procedures were used, a single applicant would have to file over 5,000 applications to be eligible to participate in all auctions. Requiring this much paperwork would serve no useful purpose.

^{34/} Arch Comments, pp. 8-9; Joint Comments, pp. 11.

^{35/} PageNet Comments, p. 42.

^{36/} Telocator Comments, pp. 12-13.

IV. Other Parties' Comments Have Revised the Joint Commenters' Position on Upfront Payments

9. In their initial comments, the Joint Commenters endorsed the Commission proposal that narrowband bidders pay 2 cents per megahertz per population in the service territory as an upfront payment.^{37/} Several other commenters have expressed concern, however, that this formula will not result in sufficiently high payments to deter speculators. For example, PageNet argues that a more demanding requirement (\$0.04 per MHz per pop with a minimum of \$25,000) is necessary in view of historical incidents of substantial speculative activity.^{38/} Similarly, Telocator expresses the view that an upfront payment of 2 cents per pop per megahertz is inadequate to discourage unqualified or insincere bidders, and recommends a \$25,000 minimum for all licenses (except the 12.5 kHz talk back channels for which \$2,500 is recommended).^{39/}

10. Based upon these comments the Joint Commenters have revised their position. As the Commission points out in the Notice, use of the \$0.02 formula could result in upfront payments as low as \$200 for a BTA with a population of 1,000,000.^{40/}

^{37/} Joint Comments, pp. 18-19.

^{38/} PageNet Comments, pp. 40-41.

^{39/} Telocator Comments, pp. 20-21. A reduced payment for the 12.5 kHz channels is appropriate since the sincerity of bidders for these channels is largely assured by the fact that only existing licensees seeking to pair the channels with other base transmit operations are eligible.

^{40/} Notice, ¶ 103.

Experience in the later rounds of cellular application filings where application fees were in this range (ie. \$230.00) indicates that wide spread speculation is a problem if this is the limit of initial out of pocket expenses.^{41/} Higher thresholds are appropriate.

11. Based on the foregoing, the Joint Commenters recommend that the formula be adjusted to require an upfront payment of \$0.04/MHz/pop for MTA licenses and \$0.08/MHz/pop for BTA licenses.^{42/} This formula will, in the Joint Commenters' view, result in sufficient minimums to deter purely speculative applicants.^{43/} At the same time, the initial payments will not be so large as to preclude participation by serious contenders who have a well designed business plan.

^{41/} Of course, these channels should be subject to less speculation than the cellular channels because the eligibility for these channels is limited solely to existing licensees.

^{42/} The Joint Commenters believe that adopting a higher payment per MHz per pop for BTAs is a better approach than adopting a minimum payment amount. For example, the Williston North Dakota BTA had an estimated 1991 population of only 26,200. A minimum upfront payment of \$25,000 for this market appears excessive. The formula proposed by the Joint Commenters assures that more populous markets will always command larger upfront payments.

^{43/} An average BTA has a population of around 5,000,000. The formula the Joint Commenters propose would result in an upfront payment of \$20,000 for an applicant seeking a single unpaired 50 kHz channel in this average market.

V. The Commission's Proposal is Superior to Some of the Suggested Alternatives

12. Some of the Narrowband Commenters have suggested certain auction procedures that the Joint Commenters do not endorse. For the reasons set forth below, these alternatives do not meet one or more of the auction design principles set forth by the Joint Petitioners as their criteria for structuring a procedure likely to result in fair and rational assignments.

A. Sealed Bidding

13. A large portion of the PageMart Comments is devoted to the claim that sealed bids provide benefits over open auctions.^{44/} The gravamen of the argument is that open oral bidding is inherently skewed in favor of deep pocket bidders who will be able to gain oligopoly control of the narrowband market.^{45/}

14. The Joint Commenters do not accept the premise that oral auctions are inherently more favorable to those with

^{44/} PageMart Comments, Section III.

^{45/} PageMart Comments, p. 7-8. The Joint Commenters do not expect to see an oligopoly of deep pocket bidders come into existence. The Commission has restricted the amount of narrowband spectrum a single licensee can hold, which assures that there will be many service providers. And, the Commission has set aside eight 12.5 kHz channels for existing paging carriers to pair with current channels to enable them to compete against the new services. Notably, one of the hallmarks of the paging industry has been robust competition and the rapid growth of companies. In fact, PageNet, the largest paging company in the U.S., was not even in existence more than 10 years ago. The Joint Petitioners see nothing in the narrowband allocation that is likely to change the fact that this is a highly competitive market.

deep pockets than sealed bids. Well-healed bidders could submit preemptive sealed bids that would effectively foreclose other participants. The simply truth is that any competitive bidding process favors those with money. It is, however, beyond the scope of this proceeding to second guess the Congressional decision to move toward auctions as the principal assignment mechanism for radio spectrum.

15. The problem, in the Joint Commenters' view, with sealed bid procedures is the extent to which they inject elements of luck and surprise into the process. Indeed, PageMart admits as much. PageMart takes comfort in the fact that, by denying a "deep pocket" an opportunity to raise its sealed bid, a small or mid-sized company can garner a license when the "deep pocket" miscalculates in the first round.^{46/} The Joint Commenters do not support auction procedures that foster grants by happenstance of this nature.

16. The Joint Commenters also are concerned that sealed bidding could result in vastly different sums being paid for equivalent spectrum by potential competitors.^{47/} Results of this nature result in an unlevel playing field, which is of particular concern in a low margin business.

^{46/} PageMart Comments, pp. 12-14.

^{47/} The public interest is served when competitors have roughly equal regulatory costs because they will then have incentives to compete on customer service, geographic coverage, and lower operating costs rather than on regulatory loopholes. The system proposed by PageMart would result in an uneven playing field which can only disserve the public interest.

B. Lump Sum Payments

17. PageNet, in its comments, urges the Commission to go further than requiring a winner to make a lump sum payment at the time a license is granted. PageNet would require all winning bidders to pay the full amount of their bids on the day of the auction.^{48/} In PageNet's view, this would discourage parties from bidding on licenses in the hope that they could finance them later.

18. The Joint Commenters earlier expressed the view that there are logistical problems with forcing people to make arrangements for the immediate payment of uncertain amounts.^{49/} Moreover, because narrowband PCS services and equipment is still in the process of being developed, an earlier lump sum payment schedule would extend the period of time in which winners are out of pocket without a revenue stream.^{50/}

19. On balance, the Joint Commenters believe the Commission's approach of requiring a forfeitable deposit and a prompt post auction lump sum payment is adequate to deter speculation and procedurally preferable.

^{48/} PageNet Comments, pp. 22-23.

^{49/} Joint Comments, p. 21. This concern was expressed in respect of the 20% deposit requirement. It would be exacerbated if applied to the entire balance due.

^{50/} Indeed, this amount could be substantial.

CONCLUSION

20. The foregoing premises having been duly considered, the Joint Commenters respectfully request that the Commission expeditiously adopt revised rules reflecting the Joint Commenter's reply comments.

Respectfully submitted,

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November 30, 1993

CERTIFICATE OF SERVICE

I, Yvette Omar, hereby certify that I have this 30th day of November, 1993, caused copies of the foregoing to be delivered by hand, courier charges prepaid, to the following:

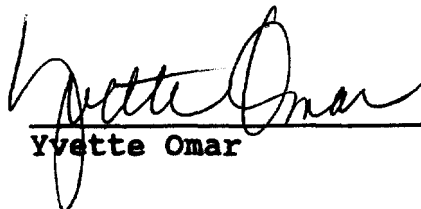
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